

ENTERED

September 16, 2020

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

EXXON MOBIL CORPORATION,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

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CIVIL ACTION NO. H-10-2386

CIVIL ACTION NO. H-11-1814

FINAL JUDGMENT

Consistent with the court's Memorandum and Order Entering Findings of Fact and Conclusions of Law issued on August 19, 2020, as amended by the Memorandum and Order issued on September 16, 2020, the court issues final judgment in accordance with Federal Rule of Civil Procedure 58.

The court issues a money judgment in favor of Exxon Mobil Corporation against the United States of America, as follows:

Baytown:

Allocation of Past Response Costs Through 2014 and Accrued Prejudgment Interest:

- Refinery-Related Units Past Costs: The government's allocated share is 24.67 percent for the past response costs of \$45,567,403.00 and interest accrued of \$9,950,216.00. The government is responsible for the following:

| | |
|---|-----------------|
| The government's allocated share of past costs: | \$11,241,478.00 |
|---|-----------------|

| | |
|---|-----------------------|
| The government's allocated share of interest: | <u>\$2,454,718.00</u> |
|---|-----------------------|

| | |
|--------------|------------------------|
| Total | \$13,696,197.00 |
|--------------|------------------------|

- Former Ordnance Works/Tankfarm 3000 Area Past Costs: The government's allocated share is 36.54 percent for the past response costs of \$5,481,340.00 and interest accrued of \$1,355,835.00. The government is responsible for the following:

| | |
|---|-----------------------|
| The government's allocated share of past costs: | \$2,002,694.00 |
| The government's allocated share of interest: | <u>\$495,376.00</u> |
| Total | \$2,498,070.00 |

- Total Government Allocation for the Combined Baytown and Baytown Ordnance Works Past Costs through 2014 and Accrued Prejudgment Interest:

| | |
|---|------------------------|
| The government's allocated share of past costs: | \$13,244,172.00 |
| The government's allocated share of interest: | <u>\$2,950,094.00</u> |
| Total | \$16,194,267.00 |

Baton Rouge:

Allocation of Past Response Costs Through 2014 and Accrued Prejudgment Interest:

- Refinery-Related Units Past Costs: The government's allocated share is 14.40 percent for the past response costs of \$26,046,130.00 and interest accrued of \$2,665,007.00. The government is responsible for the following:

| | |
|---|-----------------------|
| The government's allocated share of past costs: | \$3,750,643.00 |
| The government's allocated share of interest: | <u>\$383,761.00</u> |
| Total | \$4,134,404.00 |

The total damage award in favor of Exxon is \$20,328,670. For the reasons set forth in detail in the court's opinion, these amounts are not subject to an offset for insurance recovery by Exxon because there is no double recovery.

In addition, the court issues a declaratory judgment in favor of Exxon against the government as a percentage allocation for costs incurred for units at which Exxon has already incurred past response costs as described in this bench trial, for the period after the filing of suit through December 31, 2019, as follows:

Baytown:

- Costs for 2015–2019: The government's allocated share is 24.67 percent for the refinery-related costs and accrued prejudgment interest, and 36.54 percent for these Baytown Ordnance Works costs and accrued prejudgment interest.

Baton Rouge:

- Costs for 2015–2019: The government’s allocated share is 14.40 percent for the refinery-related costs and accrued prejudgment interest.

Further, the court issues a declaratory judgment in favor of Exxon against the government as a percentage allocation for units at which Exxon has already incurred past response costs, that the government is liable for future costs incurred from 2020 and beyond, as follows:

Baytown:

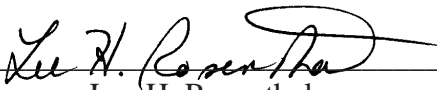
- Future Post-2019 Costs: The government’s allocated share is 24.67 percent for the refinery-related costs, and 36.54 percent for these Baytown Ordnance Works costs.

Baton Rouge:

- Future Post-2019 Costs: The government’s allocated share is 14.40 percent for the refinery-related costs.

This judgment does not foreclose the following: (1) future claims by Exxon for land-based units, areas of contamination, or sediments or waterbodies, at or adjacent to the Baytown or Baton Rouge facilities, for which Exxon had not incurred response costs as of the time of trial; (2) future claims by Exxon for land-based units, areas of contamination, or sediments or waterbodies, at or adjacent to the Baytown or Baton Rouge facilities, for which costs have been incurred during 2015–2019, such as Mitchell Bay and SWMU 47 (Waste Clay Pile); or (3) future claims for future costs with respect to land-based units or areas of contamination at the Baytown or Baton Rouge facilities that were not and could not have been raised and decided in this lawsuit.¹

Signed on September 16, 2020, at Houston, Texas.



Lee H. Rosenthal
Chief United States District Judge

¹ This court, as the court rendering judgment, does not “get to dictate to other courts the preclusion consequences of its own judgment.” *Smith v. Bayer Corp.*, 564 U.S. 299, 307 (2011) (quoting 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4405, p. 82 (2d ed. 2002)). That task “is usually the bailiwick of the second court.” *Smith*, 564 U.S. at 307.